

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-10625-SWT
OC: 08/29/04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 27, 2004, reference 01, that concluded the claimant voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on October 21, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Leona Beck. Roxanne Bekaert participated in the hearing on behalf of the employer with a witness, Nan Sloan. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a certified nurse's aide from June 3, 2003, to March 29, 2004. Carolyn Perry was the director of nursing and the claimant's supervisor. On March 22, the claimant was outside the facility and was confronted physically and verbally by a co-worker, Glenda Cherry. Cherry pushed the claimant up against a dumpster outside the

facility and told the claimant, "I'm going to kick your fucking ass." The claimant asked Cherry "what the hell" she was doing, told Cherry that she was crazy, and said she would take Cherry out in a dark alley any day. The two then separated, and the claimant reported what had happened to the charge nurse.

On March 22, the employer suspended the claimant for two days as a result of her conduct. On the suspension document the claimant accepted the consequences of her actions. Cherry was warned but was not suspended for her conduct. The claimant returned to work on March 29, 2004. She became upset that Cherry was not suspended and believed Cherry had not been disciplined at all. She complained to Perry that Cherry was not punished and expressed concern about what Cherry might do next. Perry told her that it was over and the employer was not going to take any further action. There had been mild confrontations between the claimant and Cherry before, and as result, the employer did not schedule them to work together in the same area.

The claimant returned to work but then decided to quit employment because she believed Cherry deserved to be punished like she was and she was concerned about working with Cherry again. She informed the employer that she could not continue to work under the working conditions any more, and left work immediately.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(28) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (28) The claimant left after being reprimanded.

871 IAC 24.25(6) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant denied telling Cherry that she would take her out in a dark alley any day. Instead she testified that she had told Cherry that Cherry was acting like someone would act in a dark alley. This is not credible. The statement she testified to: (1) is illogical and (2) was not what she explained to the employer or the fact finder. The preponderance of the evidence establishes that after Cherry threatened the claimant, the claimant responded that she would take Cherry out in a dark alley.

As a result, the claimant left employment because she was disciplined for conduct that the claimant admitted was inappropriate. She left because she believed that another employee had not been disciplined sufficiently based on what had happened. Both the claimant and Cherry deserved and received punishment. The employer determined the appropriate discipline based on past conduct and the facts known by the employer. The evidence does not establish intolerable or unsafe working conditions that would meet the definition of good cause attributable to the employer under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated September 27, 2004, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

saw/pjs